

that they will be sold to retailers before the new wholesale price is effective. Conversely, cigars removed after a price change decision which can reasonably be expected to be sold to retailers under the new wholesale price must be tax determined on the basis of the new wholesale price, even if the removal takes place before the new wholesale price is announced or becomes effective. A price change decision is held to be made at the earliest time during the price change considerations when it might reasonably be concluded that the decision to change the price had in fact been reached.

(i) *Determination of wholesale price by Associate Director (Compliance Operations).* The Associate Director (Compliance Operations) will determine the wholesale price for tax purposes where the manufacturer has no suggested delivered price to retailers as contemplated by the definition of "wholesale price" in §270.11 and as discussed in paragraph (a) of this section. Listings of such wholesale prices and their comparable retail prices will be published as necessary in the ATF Bulletin (see §71.41(d) of this chapter) for use by manufacturers in properly determining the tax on removals of large cigars for which there is no suggested delivered price to retailers. If a manufacturer has cigars which are not covered by the existing published listing, and for which he has no suggested delivered price to retailers, the manufacturer shall submit a written request to the Associate Director (Compliance Operations) for a determination of the wholesale price applicable to such cigars for tax purposes. If any of these cigars are removed before such determination, the manufacturer shall ascertain the wholesale price to the best of his ability based on the prices which are included in the published listing and other pertinent information available to him, and shall use that price for calculation and payment of the tax and for other tax purposes under this part, pending the determination by the Associate Director (Compliance Operations). If the wholesale price used by the manufacturer for tax payment differs from that subsequently determined by the Associate Director (Compliance Operations) to be the wholesale price

for tax purposes, then the manufacturer shall make an adjustment in his tax return to correct the amount of tax paid. Any tax adjustment shall be made on the return covering the date on which notification of the wholesale price determination was received from the Associate Director (Compliance Operations).

(5 U.S.C. 552(a) (80 Stat. 383, as amended))

[T.D. ATF-40, 42 FR 5000, Jan. 26, 1977, as amended by T.D. ATF-92, 46 FR 46921, Sept. 23, 1981; T.D. ATF-307, 55 FR 52742, Dec. 21, 1990]

§270.22a Determination of sale price of large cigars removed on or after January 1, 1991.

(a) *General rule.* The tax imposed on large cigars is computed based on the price for which the large cigars are sold by the manufacturer. Large cigars are taxed at a percentage of the sale price, as prescribed by §270.21. For example, for cigars removed during 1991 and 1992, if the price for which they are sold is \$235.294 per thousand or less, the tax imposed will be 10.625% of such price. For large cigars sold for a price of more than \$235.294 per thousand, the maximum tax is \$25 per thousand for removals during 1991 and 1992. A similar computation, with the increased percent figure and maximum tax rate, is applicable for removals on or after January 1, 1993.

(b) *Price for which sold.* The "price" for which cigars are sold includes the total consideration paid for the cigars. Any charge which is made incident to placing the cigars in condition ready for use is included in the sale price. Similar rules to 26 U.S.C. 4216(a) and the regulations thereunder, relating to charges to be included in the price and excluded from the price, shall apply.

(c) *Exclusions from price.* The tax imposed by 26 U.S.C. chapter 52 or section 7652 is excluded in determining the price for which large cigars are sold. The amount of any retail sales tax imposed by any state or political subdivision thereof or the District of Columbia is likewise excluded (whether the liability for such tax is imposed on the vendor or vendee), if the retail sales tax is stated as a separate charge.

(d) *Constructive sale price rules.* Rules similar to the constructive sale price

rules set forth in 26 U.S.C. 4216(b) and the implementing regulations in 26 CFR 48.4216(b)–1 through 48.4216(b)–4 shall be applied for purposes of determining the price for which large cigars are sold.

(e) *Readjustments in sale price.* Anticipated downward readjustments in sale price are not taken into account in computing the tax. The tax must be based upon the original price for which the cigars were sold unless the readjustments have actually been made prior to the close of the period for which the tax return is filed. However, if the price upon which the tax was computed is subsequently readjusted, credit may be taken against the tax due on a subsequent return of a claim for refund filed as provided in § 270.286.

[T.D. ATF-307, 55 FR 52742, Dec. 21, 1990]

§ 270.23 Cigarette tax rates.

On cigarettes, manufactured in or imported into the United States, the following taxes are imposed by law:

(a) *Cigarettes removed before January 1, 1991*—(1) *Small cigarettes.* \$8 per thousand.

(2) *Large cigarettes.* \$16.80 per thousand.

(b) *Cigarettes removed on or after January 1, 1991 and before January 1, 1993*—(1) *Small cigarettes.* \$10 per thousand.

(2) *Large cigarettes.* \$21 per thousand.

(c) *Cigarettes removed on or after January 1, 1993*—(1) *Small cigarettes.* \$12 per thousand.

(2) *Large cigarettes.* \$25.20 per thousand.

(d) *Special rule for large cigarettes.* If large cigarettes are more than 6½ inches in length, the rate of tax is the rate prescribed for small cigarettes, counting each 2¾ inches or fraction thereof of the length of each as one cigarette.

[T.D. ATF-307, 55 FR 52742, Dec. 21, 1990]

§ 270.24 Classification of cigarettes.

For tax purposes, small cigarettes are designated Class A and large cigarettes are designated Class B.

(72 Stat. 1414; 26 U.S.C. 5701)

§ 270.25 Smokeless tobacco tax rates.

On smokeless tobacco, manufactured in or imported into the United States, the following taxes are imposed by law:

(a) *Snuff.* (1) Snuff removed before January 1, 1991, 24 cents per pound and a proportionate tax at the like rate on fractional parts of a pound.

(2) Snuff removed on or after January 1, 1991 and before January 1, 1993, 30 cents per pound and a proportionate tax at the like rate on fractional parts of a pound.

(3) Snuff removed on or after January 1, 1993, 36 cents per pound and a proportionate tax at the like rate on fractional parts of a pound.

(b) *Chewing tobacco.* (1) Chewing tobacco removed before January 1, 1991, 8 cents per pound and a proportionate tax at the like rate on fractional parts of a pound.

(2) Chewing tobacco removed on or after January 1, 1991 and before January 1, 1993, 10 cents per pound and a proportionate tax at the like rate on fractional parts of a pound.

(3) Chewing tobacco removed on or after January 1, 1993, 12 cents per pound and a proportionate tax at the like rate on fractional parts of a pound.

[T.D. ATF-307, 55 FR 52742, Dec. 21, 1990]

§ 270.25a Pipe tobacco tax rates.

On pipe tobacco manufactured in or imported into the United States, the following taxes are imposed by law:

(a) Pipe tobacco removed before January 1, 1991, 45 cents per pound and a proportionate tax at the like rate on fractional parts of a pound.

(b) Pipe tobacco removed on or after January 1, 1991 and before January 1, 1993, 56.25 cents per pound and a proportionate tax at the like rate on fractional parts of a pound.

(c) Pipe tobacco removed on or after January 1, 1993, 67.5 cents per pound and a proportionate tax at the like rate on fractional parts of a pound.

[T.D. ATF-307, 55 FR 52743, Dec. 21, 1990]

§ 270.26 Persons liable for tax.

The manufacturer of tobacco products shall be liable for the taxes imposed on tobacco products by 26 U.S.C. 5701: *Provided*, That when tobacco products are transferred in bond pursuant